

# California Fair Political Practices Commission

## MEMORANDUM

**To:** Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

**From:** John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Re:** Proposition 34 Regulations: Regulatory Action Regarding § 85200 (“One-Bank-Account” Rule); Adopt Proposed Regulation 18520; Amend Regulations 18521, 18523, and 18523.1.

**Date:** November 28, 2001

---

### *I. INTRODUCTION*

At the July, August and October 2001 Commission meetings, the Commission considered several issues related to the “one-bank-account” rule of Proposition 73. At the October meeting, the Commission directed staff to notice amendments to regulations under the Act related to the “one bank account” rule of § 85200.

### *II. BACKGROUND*

In June 1988, Proposition 73 was approved by the voters as amendments to the Political Reform Act (the “Act”).<sup>1</sup> Among other things, Proposition 73 enacted § 85201<sup>2</sup>, which required that all contributions or loans made to a candidate, or to the candidate’s controlled committee, had to be deposited into a single campaign bank account. This section came to be known as the “one-bank-account” rule. The important impacts of this rule are as follows:

- § 85201 provided that all contributions or loans made to a candidate, or to the candidate’s controlled committee, had to be deposited in a single campaign bank account.
- § 85201(e) provided that all campaign expenditures had to be made from the appropriate campaign bank account.
- § 85202(b)<sup>3</sup> provided that contributions deposited into the campaign account must be used only for expenses associated with the election of the candidate to the specific office which the candidate intended to seek or expenses associated with holding that office.

---

<sup>1</sup> Government Code §§ 81000 - 91014. Commission regulations appear at title 2, §§ 18109 - 18997, of the California Code of Regulations.

<sup>2</sup> This section has been amended several times since the adoption of Proposition 73. Pertinent differences between the Proposition 73 language and the current language will be noted.

<sup>3</sup> This section has been renumbered to 89510.

The Commission further clarified these statutes in December 1988 by adopting regulations 18520, 18521, and 18522.<sup>4</sup> The November 30, 1988 memorandum concerning these regulations stated: “Proposed Regulation 18520 provides that in a statement of intention a candidate must name a particular election for a specific office. This provision furthers the purposes of the Political Reform Act and Proposition 73 by limiting an incumbent’s ability to stockpile contributions and thereby also reducing campaign expenditures by incumbents and challengers.” (Emphasis in original.)

Former regulation 18520 was disapproved by the Office of Administrative Law (OAL) as being inconsistent with the statute. The main issue of dispute was whether the regulation could be applied to candidates that raised funds in connection with elections that predated the adoption of section 85200. The Commission appealed to the Governor’s Office and the Governor concurred with OAL. Thus, the regulation was never formally filed with the Secretary of State.<sup>5</sup> However, the issues addressed in the regulation became the policy of the Commission in providing advice based on the construction of the statutory language.<sup>6</sup>

Numerous other regulations were also enacted in order to effectuate this rule. These include:

- Regulation 18521. Establishment of separate controlled committee for each campaign account.
- Regulation 18523. Non-designated contributions or loans.
- Regulation 18523.1. Written solicitation for contributions.
- Regulation 18524. Investment and expenditure of candidates’ campaign funds.

As conceived, Proposition 73 prohibited a candidate from transferring contributions directly or indirectly among his or her various campaign bank accounts.

On September 25, 1990, the United States District Court in *Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission* invalidated portions of the Act added by Proposition 73, including the fiscal year contribution limitations and the ban on inter and intra candidate transfers. However, despite a candidate’s ability to transfer campaign funds among his or her own campaign bank accounts, the “one-bank-account” rule continued to prohibit more than one bank account per election. For example, in 1999 we advised the Oakland City Attorney’s Office that the officeholder account provisions of the Oakland ordinance conflicted with requirements of state law because the Oakland ordinance permitted candidates to set up (1) a campaign committee and campaign bank account, (2) a separate officeholder account and (3) a legal defense fund account in connection with the same election. We advised “the one bank account rule is currently interpreted to mean that a candidate for elective office may have only one campaign bank account and one controlled committee for each specific election.” (*Hicks* Advice Letter, No. I-99-120.)

---

<sup>4</sup> Regulation 18521 continues to exist in the form adopted in 1988.

<sup>5</sup> While this regulation was never approved by OAL, the Commission also never took formal action to repeal the regulation. With the adoption of new Regulation 18520, the old disapproved 18520 will be considered repealed by this Commission action. We have attached the old version of the regulation at Appendix B.

<sup>6</sup> The old regulation 18520 consisted of four subdivisions. The first subdivision dealt with application of section 85200 to pre-Proposition 73 committees (pre-1989), an issue that is now moot. Subdivision (b) defined the “statement of intention” to be a candidate. Subdivision (c) allowed statements of intention to be filed for multiple offices concurrently. The last subdivision set a duration or life span for the statement of intention that ended with the termination of the committee pursuant to section 84214. All of these are current advice without regulatory language.

**Senate Bill 34:** Sen. Bill No. 34 (Chap. 241 stats. of 2001) made further revision to the statutes considered in this memorandum. Section 85317 was merely amended to correct a typographical error in the text of the statute. The erroneous term “state elective office” has been replaced with the correct term, “elective state office.” In addition, § 85318, while not formerly at issue in this memorandum, has been amended to include bank account language which brings the statute into the purview of this agenda item. Specifically, the new language in § 85318 provides: “Notwithstanding Section 85201, candidates for elective state office may establish separate campaign contribution accounts for the primary and general elections or special primary and special general elections.” This legislative amendment has been reflected in the proposed regulations to avoid any conflict between the regulation and the amended statute.<sup>7</sup>

### ***III. SPECIFIC REGULATORY CHANGES***

The issue of “redesignation” of committees and/or campaign bank accounts is not an issue of multiple committees for the same election, but rather a question of the procedure to be used to establish a committee for a new election to the same office.

The logic supporting redesignation is that since § 85201 and regulation 18521 continue to require a separate campaign bank account for each election to a specific office, redesignation simply allows the candidate to avoid the procedural steps of opening a new committee and a new bank account and having to transfer funds from the old committee to the new committee (with attendant committee and bank account number changes). Rather, the candidate could leave the funds where they were and simply “redesignate” the existing committee and bank account for the new election. This way, by simply amending the campaign bank account statement and the statement of organization, the candidate could avoid having to physically move the funds, and could proceed with his or her campaign for the next election for the same office. Of course the redesignation rule was created at a time when there were no contribution limits (other than in special elections), no cap on post-election fundraising, and no requirement that funds raised after an election be used only for the payment of net debt.

At the October 2001 Commission Meeting, the Commission directed staff to notice draft regulations that provided that the redesignation of committees not be allowed. The proposed changes effectuating this directive consist of the adoption of regulation 18520, and amendment to regulations 18521, 18523 and 18523.1. Where language has been deleted from the October version we have shown this in double strikethrough font. New language added after October is shown in bold, italic, underscore font.

- **Regulation 18520:** New regulation 18520 codifies the requirement of § 85200 of Proposition 73 that candidates must file a statement of intent to be a candidate for each specific term of office for which they intend to run. The new regulation expressly states that “specific office” means each specific term of office. Consequently, an assembly member elected to a two-year term would be required to file a new statement of intent for his reelection to another two-year term in the Assembly. This is the existing rule. The same rule and this regulation apply to local elected officers.

---

<sup>7</sup> In addition, § 89510, which sets forth the definition of “acceptable contributions,” was also amended as follows: “(a) A candidate for elective state office may only accept contributions ~~in accordance with the provision set forth within the limits provided~~ in Chapter 5 (commencing with § 85100). [¶] (b) All contributions deposited into the campaign account shall be deemed to be held in trust ~~for purposes set forth in Chapter 5 (commencing with Section 85100)~~ expenses associated with the election of the candidate or for expenses associated with holding office.”

- **Regulation 18521:** Regulation 18521 is being amended to apply only to candidates for elective state office and statewide elective office in light of Proposition 34. The amendments clarify that a separate controlled committee and separate campaign bank account are required for each specific term of office as set forth in regulation 18520. The only changes to this regulation since October are clarifying changes in subdivision (a) line 8 and subdivision (b) line 11.
- **Regulation 18523.** Regulation 18523 has been amended and reformatted into three separate subdivisions for ease of use. In subdivision (a), language has been inserted to clarify that when allocating contributions or loans received by a candidate that are not designated for a particular controlled committee, the candidate may allocate the contribution to any of his or her controlled committees, but only to the extent allowed under applicable law (including the contribution limits in §§ 85301 and 85302). Subdivision (b) has been amended to clarify the existing language. The only changes that have occurred since October occur at line 4 where a new introductory sentence has been added. This clarifies the scope of this regulation. The second change occurs at lines 9 and 10 in subdivision (a) where a cross citation to subdivision (b) has been added.
- **Regulation 18523.1.** Regulation 18523.1 sets out the disclosure requirements applicable to written solicitations for contributions. The existing language of the regulation has been retained as subdivision (a). A new subdivision (b) has been added specifically listing the requirements applicable to candidates for elective state office. These requirements include identification of the particular controlled committee for which the contribution is solicited, the specific office, the specific term of office, as well as disclosure as to whether the contribution is being solicited for a primary or general election, or a special or special runoff election and the applicable contribution limits.

Since October several clarifying changes have been made, including the renumbering of the regulation to better reflect the separate rules applicable to candidates for elective state office and candidates for local office. In addition, in response to a suggestion, a substantive change was made adding the word “and” to line 14 and line 15 of the regulation. This language deals with situations where a candidate may choose to raise contributions for the primary and general election in the same solicitation. Note that subdivision (b)(1)(C) is a bracketed **decision point**.

There are two **decision points** for the Commission's consideration:

**Decision point 1** addresses an issue raised at the October Commission meeting where concern was expressed that the requirement that candidates state in their solicitation for contributions that contributors designate their contributions for a specific committee could be construed as a rule prohibiting the use of nondesignated contributions. The opinion was expressed that candidates should be able to designate contributions themselves, so long as the applicable contribution limits were complied with.

Staff has performed additional research on this matter and now agrees that the language at **decision point 1** (both in subdivision (a) and (b)(2)) should be deleted. The requirement, while existing law, has no impact on whether a candidate may accept the contribution and whether the contributor may make it. Pursuant to regulation 18523, a candidate may accept undesignated contributions and allocate them to any committee consistent with the limits applicable to the committee. Consequently, the requirement becomes a technical violation that serves no significant purpose under the Act and we would agree that it should be eliminated.

**Decision point 2**, as noted above, requires disclosure of whether the candidate is raising funds for a primary or general election, or both. Staff recommends that this requirement be retained. This differs from the rule above in that such information on the solicitation is useful for both the contributor and the candidate in complying with the Act. Since in many cases candidates will use the same committee for both the primary and general election (section 85318) the contribution will need to be identified on the candidate's campaign reports as a contribution for the primary or general election. While some of the same concerns with respect to the language we recommend deleting in decision point 1 also apply here, it does seem there is a benefit to this disclosure.

**Staff Recommendation:** Adopt new regulation 18520 and the proposed amendments to regulations 18521, 18523, and 18523.1. In regulation 18523.1, delete the language at **decision point 1** and retain the language at **decision point 2**.

Attachments

Appendix A: Draft regulations

Appendix B: Disapproved 18520